

KAYE SCHOLER LLP

ORIGINAL

The McPherson Building
901 Fifteenth Street, N.W.
Suite 1100
Washington, D.C. 20005-2327
202 682-3500
Fax 202 682-3580
www.kayescholer.com

EX PARTE OR LATE FILED

October 16, 2002

RECEIVED

OCT 16 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554
ATTN: David Brown

Re: Docket No. MB 02-235
Ex Parte Presentation, DA 02-2082

Dear Ms. Dortch:

On October 15, 2002, Spanish Broadcasting System, Inc., made an ex parte presentation to Commissioner Michael J. Copps, pursuant to the Commission's Public Notice in the above-referenced docket, released August 26, 2002.

There is transmitted herewith two (2) copies of a bound document associated with the oral ex parte presentation, and filed in accordance with Section 1.1206(b)(1) of the Commission's Rules.

Should any questions arise with regard to this matter, kindly communicate directly with this office.

Very truly yours,

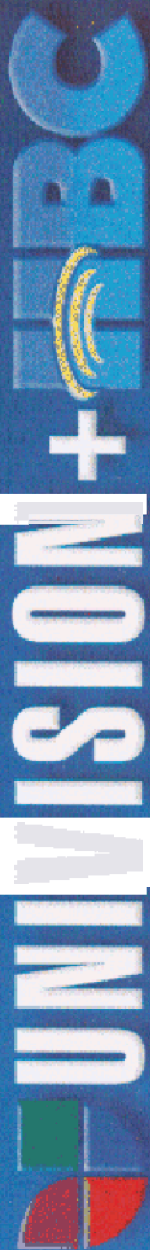
KAYE SCHOLER, LLP

By 
Bruce A. Eisen

No. of Copies rec'd 0
List ABCDE

Enclosure

cc: Qualex International/Rm CY-B402



Monopolistic Control of U.S. Hispanic Media & Entertainment



CLEAR CHANNEL



Federal
Communications
Commission

COMMISSIONER MICHAEL J. COPPS

OCTOBER, 2002



Related Hearings, Investigations, Proceedings and Filings

Regulatory Agencies

- **DOJ** - Task Force investigating Clear Channel Entertainment
- **DOJ** - Task Force reviewing Univision/HBC transaction/"second request" issued
- **FCC** - Ringer Petition to Deny various Clear Channel acquisitions alleging CC control of radio "fronts"
- **FCC** - Petitions to Deny filed against Univision/HBC transaction
- **FCC** - Commission waives ex parte rules in seeking comments on Univision/HBC transaction – SBS participates in ex parte proceedings

Congress

- Congressman Berman investigating CC anticompetitive practices
- Congressman Weiner investigating CC corporate abuse
- Senator Feingold formulates legislation against CC's anticompetitive practices
- Congressional Hispanic Caucus to review Univision/HBC transaction

Federal Court

- SBS Antitrust Complaint

UNIVISION + Public Interest Conflicts

fact...



- Have intentionally lied to the FCC, flagrantly violated ownership limits and conspired to control U.S. Hispanic Radio



- Have misrepresented Univision's de facto control of Entravision and has conspired to control U.S. Hispanic TV














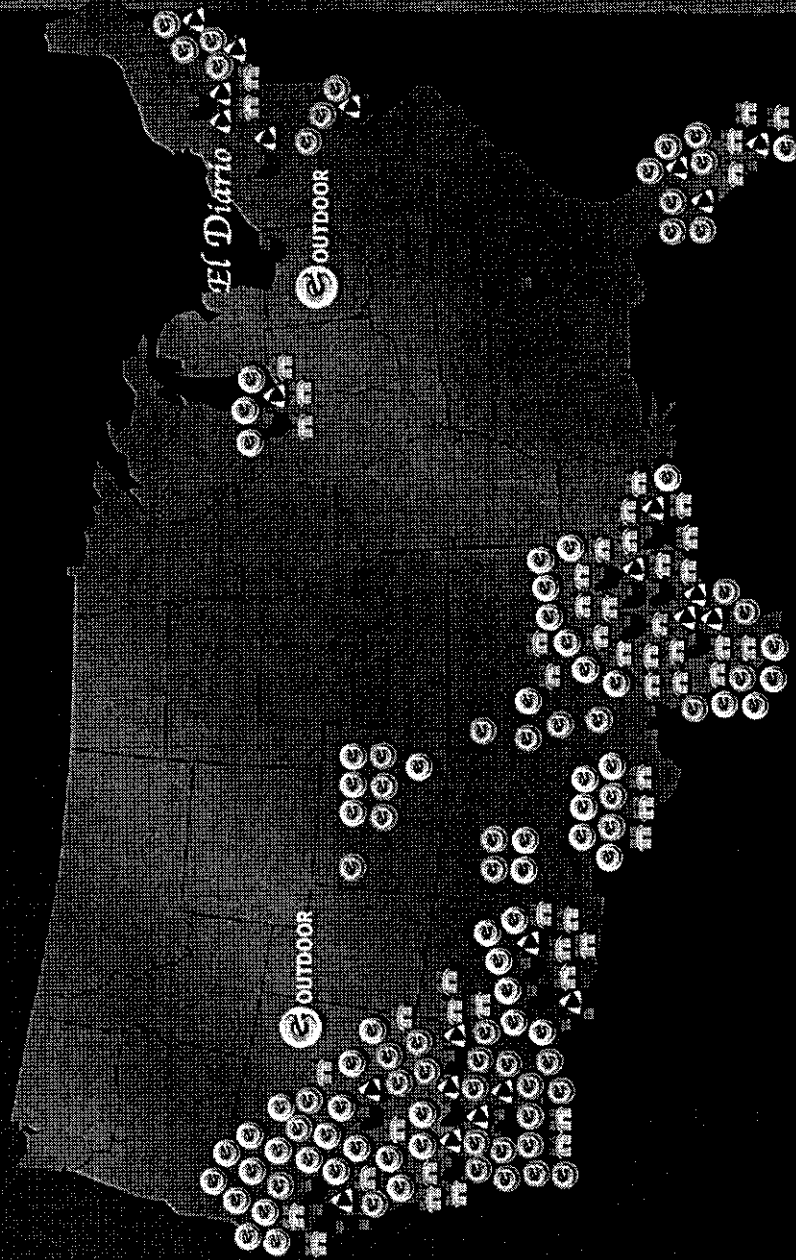
- Elimination of viable competitor
- Monopolistic market share
- Dominant economic concentration
- Decreases diversity of voices
- Reinforces existing barriers to entry
(Forecloses Hispanic ownership of media)

U.S. HISPANIC MEDIA & ENTERTAINMENT WILL BE CONTROLLED BY ONE INDIVIDUAL

ORIGINAL

UNIVISION + NBC Resultant Control of U.S. Hispanic Media

Univision stations	
Teletutur stations	
Cable	
Entravision stations	
Radio	
Internet	 
Billboards	
Newspaper	
Publishing	
Records	



One individual (non-Hispanic) will control U.S. Hispanic Media & Entertainment

UNIVISION + NBC

Total Hispanic Broadcast Revenues (amount in Millions) TOP 10 MARKETS - STARTING POINT*

Market	Total TV/Radio	Univision + HBC	% of Total
Los Angeles	\$303	\$219	72%
Miami	171	95	56%
New York	122	59	48%
Houston	84	68	81%
Chicago	73	50	68%
San Francisco	64	52	82%
Dallas	62	45	71%
San Antonio	42	34	81%
San Diego	26	23	86%
El Paso	23	22	96%
Total	\$970	\$666	69%

* Excludes Telefutura and Cross Platform selling efforts

Source 2002 BIA Financial Network

UNIVISION  **ENTRAVISION**

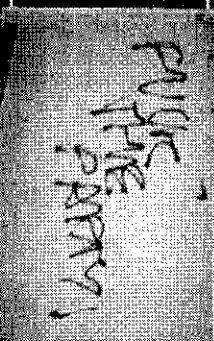
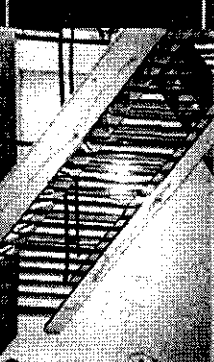
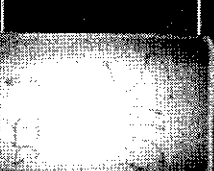
 **CLEAR CHANNEL** 

Parallel Paths to Control U.S. Hispanic Media & Entertainment

UNIVISION + HBC Sham Checklist

FCC SHAM FILINGS

MARKETPLACE REALITIES

<p>Clear Channel is a passive investor does not control HBC</p>	<p>Clear Channel created HBC Clear Channel funded HBC Clear Channel assisted/directed HBC Clear Channel "dealt" HBC to Univision - Bel Air, CA May 2002 Clear Channel illegally tried to derail HBC competitor SBS</p>
<p>Clear Channel has "non-voting" stock in HBC</p>	<p>Clear Channel's 26% "non-voting" HBC stake is actually much more determinative than if 26% were actually voting: HBC cannot make a single major corporate act without Clear Channel approval (negative control)</p>
<p>Clear Channel has no HBC board representation</p>	<p>To this day, HBC board has directors originally named by Clear Channel prior to adoption of "non-voting" scam</p>
<p>Clear Channel has character qualifications befitting an FCC licensee</p>	<p>    </p>

UNIVISION + Sham Checklist

FCC SHAM FILINGS MARKETPLACE REALITIES

~~Clear Channel
is a passive investor
does not control HBC~~

Clear Channel created HBC
Clear Channel funded HBC
Clear Channel assisted/directed HBC

~~Clear Channel has no
"non-voting" stock in HBC~~

~~Clear Channel has no
HBC board representation~~

~~Clear Channel has character
qualifications bettering
an FCC licensee~~

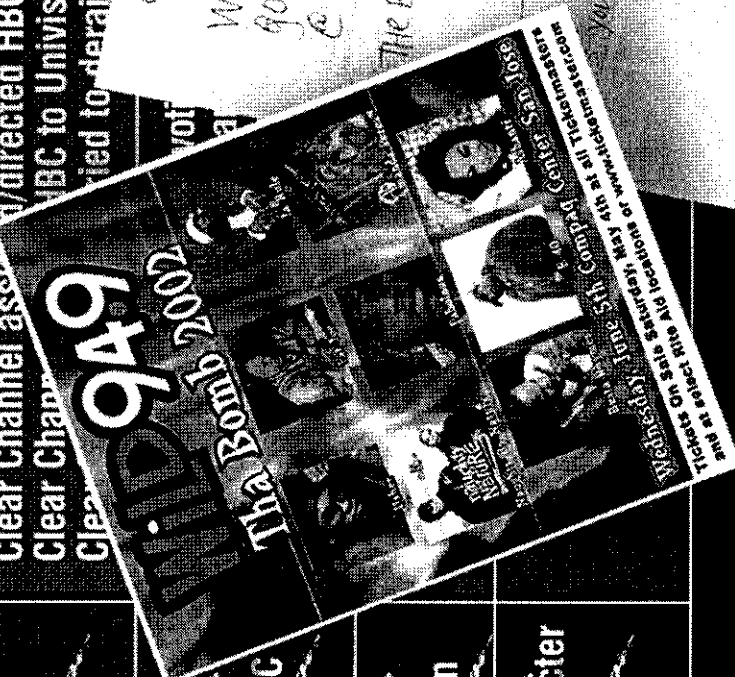
WISN 949

WISN 949

UNIVISION + HBC Sham Checklist

FCC SHAM FILINGS MARKETPLACE REALITIES

<p>Clear Channel is a passive investor does not control HBC</p>	<p>Clear Channel created HBC Clear Channel funded HBC Clear Channel associated/directed HBC Clear Channel HBC to Univision - Bel Air, CA May 2002 Clear Channel tried to derail HBC competitor SBS</p>
<p>Clear Channel has no "non-voting" stock in HBC</p>	<p>92.7 Party! Welcome to the Bay Good Luck! From the Staff @ WILD 94.9 The Bay Area's ONLY PARTY STATION</p>
<p>Clear Channel has no HBC board representation</p>	
<p>Clear Channel has character qualifications befitting an FCC licensee</p>	<p>you'll need it!</p>



UNIVISION+ Sham Checklist

FCC SHAM FILINGS

MARKETPLACE REALITIES

~~Clear Channel
is a passive investor
does not control HBC~~

~~Clear Channel has no
"non-voting" stock in HBC~~

~~Clear Channel has no
HBC board representation~~

~~Clear Channel has character
qualifications befitting
an FCC licensee~~

Clear Channel created HBC
Clear Channel funded HBC
Clear Channel assisted/directed HBC



UNIVISION + Sham Checklist

FCC SHAM FILINGS

MARKETPLACE REALITIES

~~Clear Channel
is a passive investor
does not control HBC~~

~~Clear Channel has no
"non-voting" stock in HBC~~

~~Clear Channel has no
HBC board representation~~

~~Clear Channel has character
qualifications befitting
an FCC licensee~~

Clear Channel created HBC
Clear Channel funded HBC
Clear Channel assisted/directed HBC

RADIO
LIES!

ORIGINAL

UNIVISION + Sham Checklist

FCC SHAM FILINGS

MARKETPLACE REALITIES

~~Clear Channel
is a passive investor
does not control HBC~~

~~Clear Channel has no
"non-voting" stock in HBC~~

~~Clear Channel has no
HBC board representation~~

~~Clear Channel has character
qualifications being
an FCC licensee~~

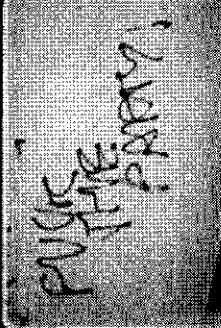

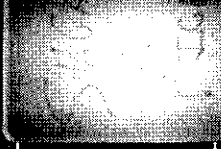
Clear Channel created HBC
Clear Channel funded HBC
Clear Channel assisted/directed HBC

COCK
TO
P
PRND

UNIVISION + HBC Sham Checklist

FCC SHAM FILINGS

MARKETPLACE REALITIES

<p>Clear Channel is a passive investor does not control HBC</p>	<p>Clear Channel created HBC Clear Channel funded HBC Clear Channel assisted/directed HBC Clear Channel "dealt" HBC to Univision - Bel Air, CA May 2002 Clear Channel illegally tried to derail HBC competitor SBS</p>
<p>Clear Channel has no "non-voting" stock in HBC</p>	<p>Clear Channel's 26% "non-voting" HBC stake is actually much more determinative than if 26% were actually voting: HBC cannot make a single major corporate act without Clear Channel approval (negative control)</p>
<p>Clear Channel has no HBC board representation</p>	<p>To this day, HBC board has directors originally named by Clear Channel prior to adoption of "non-voting" scam</p>
<p>Clear Channel has character qualifications being an FCC licensee</p>	  

UNIVISION+ Sham Checklist

FCC SHAM FILINGS

MARKETPLACE REALITIES

Univision does not control Entravision	Univision created Entravision Univision funded Entravision Univision repurchased Entravision shares in open market Univision controls programming = lifeblood of Entravision
Univision and Entravision are "independent" competitive entities	Univision blocked Entravision competitor from acquiring TV stations in Tampa, Orlando and Washington, D.C.
Univision is not involved in Entravision operations	Univision blocked competitor Telemundo from advertising on Entravision radio stations in Denver
Univision is not a monopolist	Univision denied access to its TV network to all internet portals in order to provide exclusivity to Univision.com
Univision has proposed non-voting stock and removal of directors from Entravision board	Univision retains 31% ownership Univision retains programming lifeblood Univision non-voting sham = Clear Channel non-voting sham

UNIVISION + Sham Checklist

FCC SHAM FILINGS

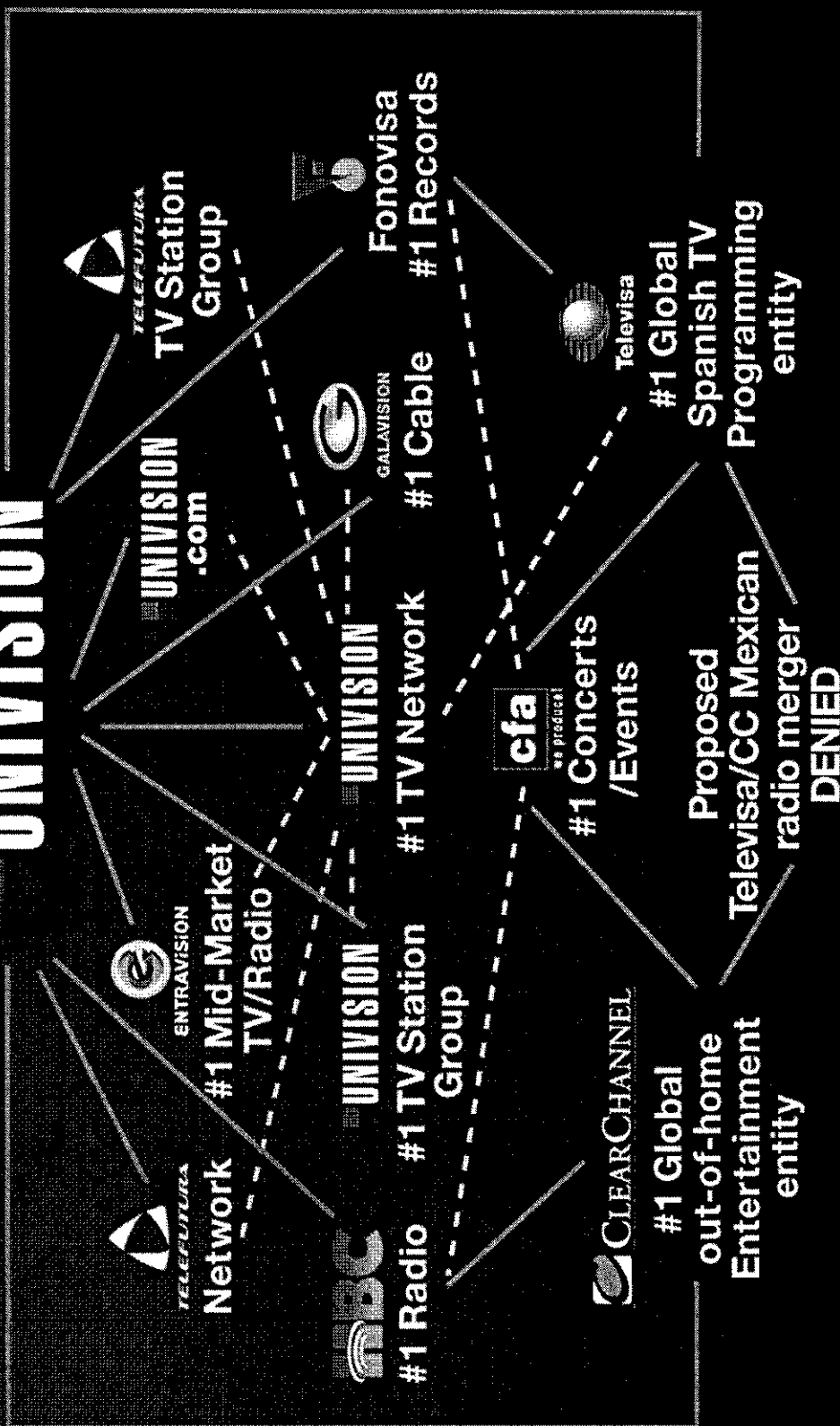
MARKETPLACE REALITIES

Univision does not control Entravision	Univision created Entravision Univision funded Entravision Univision repurchased Entravision shares in open market Univision controls programming = lifeblood of Entravision
Univision and Entravision are "independent" competitive entities	Univision blocked Entravision competitor from acquiring TV stations in Tampa, Orlando and Washington, D.C.
Univision is not involved in Entravision's operations	Univision blocked competitor Telemundo from advertising on Entravision radio stations in Denver
Univision is not a monopolist	Univision denied access to its TV network to all internet portals in order to provide exclusivity to Univision.com
Univision has proposed non-voting stock and removal of directors from Entravision board	Univision retains 31% ownership Univision retains programming lifeblood Univision non-voting sham = Clear Channel non-voting sham

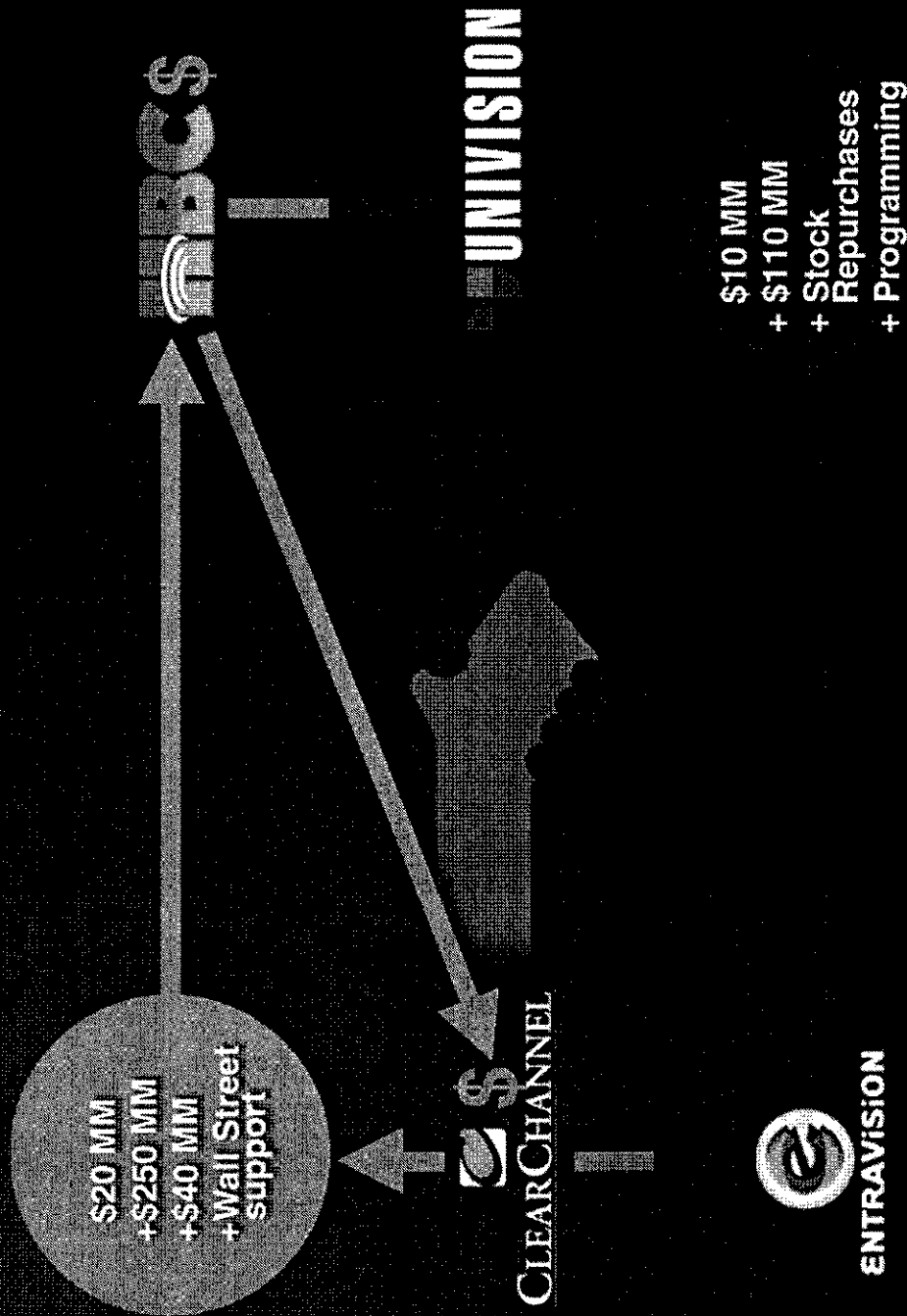
Structural Nexus

Jerry Perenchio

UNIVISION



UNIVISION+ABC The Money Trail



Clear Channel Dollars Univision Dollars

UNIVISION + ABC Public Interest Conflicts

Elimination of Hispanic Voices

Nelson Lavergne
(New York)

Amador Bustos
(Multiple markets)

Julio + Elias Liberman
(Los Angeles)

Tom Castro
(Los Angeles/Houston)

Amancio Suarez
(Miami)

Rene de la Rosa
(San Francisco)

Arturo Velazquez
(Chicago/San Francisco)

Marcos Rodriguez
(Dallas)

UNIVISION + ABC Public Interest Conflicts

Elimination of Hispanic Voices

Nelson **Dune**
(New York)

Amar **Dos**
(Multiple markets)

Julio **Derman**
(Los Angeles)

Tam **D**
(Los Angeles/Houston)

Aman **D**
(Miami)

Rene **D**
(San Francisco)

Arturo **D**
(Chicago)

Marco **D**
(Dallas)



Reinforces existing barriers to entry (forecloses Hispanic ownership of media)

UNIVISION + Public Interest Conflicts

Why the Commission should oppose the UNIVISION + merger

HISTORICALLY

- Abuse of FCC ownership rules
- Anticompetitive practices
- Conspiratorial control of U.S. Hispanic Media & Entertainment
- Applicants are large thriving entities – each enjoys above average growth

PROSPECTIVELY

- Elimination of viable competitor
- Monopolistic market share
- Dominant economic concentration
 - Advertisers will be "squeezed" and small Hispanic Agencies will disappear
- Decreases diversity of voices
- Reinforces existing barriers to entry (Forecloses Hispanic ownership of media)
- U.S. Hispanic Media & Entertainment will be controlled by ONE INDIVIDUAL

 DOES NOT SERVE THE PUBLIC INTEREST, CONVENIENCE AND NECESSITY



Recommendations

The proposed acquisition of HBC by Univision should be **DENIED** as it will create an irreversible negative impact inconsistent with the public interest.

The Perenchio, Clear Channel, Tichenor voting agreement should be voided as it violates the Communications Act.

Since June 1996 the Clear Channel stake in HBC has been illegal and attributable. The Commission should designate both licensees for hearing.

Since December 1996 Univision has misrepresented its control of Entravision. Univision now proposes to use Clear Channel's sham ownership structure to control U.S. Hispanic media. The Commission should designate both licensees for hearing.

UNIVISION + ABC



Selected quotes from FCC Commissioners – October 10, 2002

"We are asked to take a lot on faith to approve this agreement, yet at the end of the day we can be certain of only one thing: we are eliminating whatever exists of competition in this sector in favor of something that walks and talks and looks very much like a monopoly..."

Were this merger to proceed as presented, the likelihood of another (competitor) entering the market in the near future – and being able to compete effectively with the huge merged entity applicants seek to create – would be so tiny as to be almost invisible."

– Commissioner
Michael J. Copps

UNIVISION + NBC

ECHOSTAR

DIRECTV

Selected quotes from FCC Commissioners – October 10, 2002

"...the proposed merger would eliminate an existing viable competitor..."

This flies in the face of three decades of communications policy that has sought ways to eliminate the need for regulation by fostering greater competition"

– Chairman
Michael K. Powell

"More specifically, the proposed merger will substantially increase the level of concentration in an already highly concentrated market."

The applicants have not demonstrated any merger-specific public interest benefits that outweigh these harms..."

– Commissioner
Kathleen Q. Abernathy

"Particularly in this environment, the Commission must be wary of taking action that would decrease, not increase, competition in this market"

– Commissioner
Kevin J. Martin

UNIVISION + NBC



Selected quotes from FCC Commissioners – October 10, 2002

"...the proposed merger would eliminate an existing viable competitor..."

This flies in the face of three decades of communications policy that has sought ways to eliminate the need for regulation by fostering greater competition"

– Chairman
Michael K. Powell

"More specifically, the proposed merger will substantially increase the level of concentration in an already highly concentrated market."

The applicants have not demonstrated any merger-specific public interest benefits that outweigh these harms..."

– Commissioner
Kathleen Q. Abernathy

"Particularly in this environment, the Commission must be wary of taking action that would decrease, not increase, competition in this market"

– Commissioner
Kevin J. Martin